

1 Anne M. Talcott
Allison K. Miller
2 Schwabe, Williamson & Wyatt, P.C.
1420 5th Ave., Suite 3400
3 Seattle, WA 98101
Telephone: (206) 622-1711
4 Email: atalcott@schawbe.com
Email: amiller@schwabe.com
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6 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

7 LAURA BROWN,

8 Plaintiff,

9 v.

10 THE HERSHEY COMPANY,

11 Defendant.

Case No. CV-12-083-EFS

NOTICE OF REMOVAL TO U.S.
DISTRICT COURT UNDER 28
U.S.C. § 1441 (b) (DIVERSITY)

12 TO: THE CLERK OF THE ABOVE-ENTITLED COURT
13

14 AND TO: Plaintiff and her attorney Lloyd A. Herman, Herman & Associates,
15 P.S., 213 North University Road, Spokane, WA 99206

16 PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1441 and
17 1446, Defendant The Hershey Company hereby files this Notice of Removal of
18 this action from the Superior Court for Spokane County, Washington to the
19 United States District Court for the Eastern District of Washington at Spokane.
20

21 In support of this Notice of Removal, Defendant The Hershey Company states
22 as follows:
23

24 ///

25 ///

26
NOTICE OF REMOVAL TO U.S. DISTRICT
COURT UNDER 28 U.S.C. § 1441 (b)
(DIVERSITY) - 1

PDX/115894/184724/AKM/8872174.1

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
U.S. Bank Centre
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010
Telephone 206.622.1711 Fax 206.292.0460

1 1. On January 13, 2012, Plaintiff Laura Brown served Defendant The
2 Hershey Company with a Summons and Complaint. Attached as Exhibit A are
3
4 true and correct copies of the Summons and Complaint.

5 2. Because Defendant The Hershey Company was served with
6 process on January 13, 2012, this Notice of Removal is being timely filed
7
8 within 30 days as calculated according to the Federal Rules of Civil Procedure.

9 3. As required by Local Rule E. Dist. Wash. CR 101(b), a true and
10 correct copy of all process, pleadings, and orders served on Defendant are
11
12 attached hereto as Exhibit A.

13 4. The sole defendant in this action is The Hershey Company. The
14 Hershey Company is a Delaware corporation with its principal place of
15
16 business in Hershey, Pennsylvania.

17 5. This is a civil action over which this Court has original jurisdiction
18
19 under 28 U.S.C. § 1332, and is one which may be removed to this Court by
20 Defendant pursuant to the provisions of 28 U.S.C. § 1441(b). This is a civil
21 action between citizens of different states, and, based on Defendant's
22
23 information and belief, the amount in controversy exceeds the sum of \$75,000,
24 exclusive of interest and costs.

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26
**NOTICE OF REMOVAL TO U.S. DISTRICT
COURT UNDER 28 U.S.C. § 1441 (b)
(DIVERSITY) - 2**

PDX/115894/184724/AKM/8872174.1

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1 6. This action is a civil suit for damages arising from an incident in a
2 store located in Spokane, Washington that occurred on or about January 10,
3
4 2009, which Plaintiff alleges caused personal injury to Plaintiff Laura Brown.

5 7. Plaintiff has not alleged a particular amount of damages in her
6 complaint, but she is claiming compensation for damages including loss of
7
8 earning capacity, pain, suffering, mental anguish, costs, disbursements,
9 attorneys' fees and special damages for all hospital, medical, medication,
10 physical therapy expenses, loss of past and future income, and further relief as
11
12 the court deems appropriate and other damages.

13 8. On January 30, 2012, Plaintiff informed defense counsel, Anne M.
14 Talcott and Allison K. Miller, that Plaintiff is seeking more than \$75,000.

15 9. A copy of this Notice of Removal will be filed with the Clerk of
16
17 the Washington Superior Court for Spokane County on February 2, 2012 and
18
19 served on Plaintiff's counsel as required by law, as indicated on the attached
20
21 certificate of service.
22
23
24
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26

1 Dated this 2nd day of February, 2012.

2 SCHWABE, WILLIAMSON &
3 WYATT, P.C.

4 By: /s/ Anne M. Talcott
5 Anne M. Talcott, WSBA #26886
6 Allison K. Miller, WSBA #36977
7 *Attorneys for Defendant*
8 *The Hershey Company*
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NOTICE OF REMOVAL TO U.S. DISTRICT
COURT UNDER 28 U.S.C. § 1441 (b)
(DIVERSITY) - 4

PDX/115894/184724/AKM/8872174.1

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CERTIFICATE OF SERVICE


I hereby certify that on the 2 day of February, 2012, I caused to be served the foregoing NOTICE OF REMOVAL TO U.S. DISTRICT COURT UNDER 28 U.S.C. § 1441 (b) (DIVERSITY) on the following party at the following address:

Lloyd A. Herman
Lloyd A. Herman & Associates, P.S.
213 North University Rd.
Spokane Valley, WA 99206
Telephone: (509) 922-6600
Facsimile: (509) 922-4720
E-Mail: lloydherman@aol.com
WSBA #3245
Attorney for Plaintiff

by:

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

U.S. Postal Service, ordinary first class mail
U.S. Postal Service, certified or registered mail,
return receipt requested
hand delivery
facsimile
electronic service
other (specify) _____



Tanya Garbell

CERTIFICATE OF SERVICE - 1

EXHIBIT A

EXHIBIT A

COPY
ORIGINAL FILED

DEC 22 2011

THOMAS R. FALLOUST
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

LAURA BROWN, individually,

Plaintiff,

-vs-

THE HERSHEY COMPANY, a Delaware
corporation,

Defendant.

No.

11205185-9

SUMMONS

COPY

TO: THE HERSHEY COMPANY, defendant.

A lawsuit has been started against you in the above-entitled court by the plaintiff, Laura Brown. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against the lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the undersigned attorney for the plaintiff within 20 days after the service of this Summons, or within 60 days if this Summons was served outside the State of Washington, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where the plaintiff

SUMMONS - 1

LLOYD A. HERMAN & ASSOCIATES, P.S.
213 North University Rd.
Spokane Valley, Washington 99206
Phone (509) 922-6600
Fax (509) 922-4720
LloydHerm@aol.com

1 are entitled to what he asks for because you have not responded. If you serve a notice of
2 appearance on the undersigned attorney, you are entitled to notice before a default judgment
3 may be entered.
4

5 You may demand that the plaintiff file the lawsuit with the court. If you do so, the
6 demand must be in writing and must be served upon the plaintiff. Within 14 days after the
7 service of the demand, the plaintiff must file this lawsuit with the court, or the service on
8 you of this Summons and Complaint will be void.

9 If you wish to seek the advice of an attorney in this matter, you should do so
10 promptly so that your written response, if any, may be served on time.
11

12 This Summons is stated pursuant to Rule 4 of the Superior Court Civil Rules of the
13 State of Washington.

14 DATED in Spokane Valley, Washington, this 22nd day of December 2011.

15
16 LLOYD A. HERMAN & ASSOCIATES

17
18 By: 

Lloyd A. Herman
WSBA No. 3245
Attorney for Plaintiff

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22
23
24
25
26
27 SUMMONS - 2

LLOYD A. HERMAN & ASSOCIATES, P.S.
213 North University Rd.
Spokane Valley, Washington 99206
Phone (509) 922-6600
Fax (509) 922-4720
LloydHerm@aol.com

COPY
ORIGINAL FILED
DEC 22 2011

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

LAURA BROWN, individually,

Plaintiff,

-vs-

THE HERSHEY COMPANY, a Delaware
corporation,

Defendant.

No.

11205185-9

COMPLAINT

COPY

COMES NOW the Plaintiff, Laura Brown, by and through her attorney of record,
LLOYD A. HERMAN of the firm LLOYD A. HERMAN & ASSOCIATES, P.S., and for
cause of action against the Defendant, the Hershey Company, does complain and allege as
follows.

I. PARTIES

1.1. Plaintiff, Laura Brown, at the time of the accident mentioned herein, is a
resident of the City of Spokane in the County of Spokane in the State of Washington.

COMPLAINT - 1

LLOYD A. HERMAN & ASSOCIATES, P.S.
213 North University Rd.
Spokane Valley, Washington 99206
Phone (509) 922-6600
Fax (509) 922-4720
LloydHerm@aol.com

1.2. Based on Plaintiff's best information, belief, and investigation, at the time of the accident, Defendant The Hershey Company ("Hershey") is a Delaware corporation doing business in the County of Spokane and the State of Washington.

II. JURISDICTION & VENUE

2.1 That all acts hereinafter alleged occurred within the State of Washington, County of Spokane, and that this Court has jurisdiction over this cause pursuant to Revised Code of Washington RCW 4.12 et seq.

2.2 That all acts hereinafter alleged occurred within the State of Washington, County of Spokane, therefore, venue is proper in the Superior Court in and for the County of Spokane pursuant to Revised Code of Washington RCW 4.12 et seq.

III. FACTUAL ALLEGATIONS

3.1. Sometime before January 10, 2009, the Defendant Hershey's assembled and packaged a candy display box. The candy display box weighed about 400 pounds, contained 360 candy bars, and was loaded with one-pound Hershey candy bars in the top two racks thereby making it top heavy and unstable when moved. The fully-loaded candy display box was shipped in a pallet that included a built-in ramp system that was used to remove the candy display box from the pallet. The Defendant Hershey shipped the pallet containing the candy display box to the Albertson's Supermarket located at 6520 North Nevada Street in Spokane,

3.2. The Plaintiff Laura Brown worked at the Albertson's Supermarket located at 6520 North Nevada Street in Spokane, Washington where she was employed as a customer service supervisor. Part of her job involved the assembling and setting up of product

1 displays. On or about January 10, 2009, the Defendant Hershey's pallet containing its
2 candy display box arrived at the Albertson's Supermarket where the Plaintiff Laura Brown
3 was employed. The Plaintiff Laura Brown began to remove the Hershey's candy display
4 box from the pallet using its built-in ramp system. However, because the Hershey's candy
5 display box was so top heavy, it fell on the Plaintiff Laura Brown's right leg seriously
6 injuring her.

8 IV. CAUSE OF ACTION - NEGLIGENCE

9 4.1 Plaintiff realleges and incorporates by reference all preceding allegations.

10 4.2 On or about November 22, 2008, the Defendant Hershey owed a duty of
11 care to the Plaintiff Laura Brown to assemble and load its 400-pound candy display box in
12 a safe manner so it would not fall over and injure her when she tried to remove it from the
13 pallet. Defendant Hershey negligently breached that duty by packing its candy display box
14 so that it was top heavy and unstable when moved thereby causing it to fall on top of the
15 Plaintiff Laura Brown.

16 4.3 The Plaintiff Laura Brown was free from negligence.

18 V. PROXIMATE CAUSE

19 5.1 Plaintiff realleges and incorporates by reference all preceding allegations.

20 5.2 The Defendant Hershey was negligent and its negligence was the proximate
21 cause of injuries and damages sustained by the Plaintiff Laura Brown

22 5.3 As a direct and proximate result of the Defendant's negligence, Plaintiff
23 Laura Brown was caused to be severely injured; that although medical attention, surgery
24 and supportive remedies have been resorted to, said injuries, together with pain, discomfort
25

1 and limitation of movement, prevail and will continue to prevail for an indefinite time into
2 the future, that it is impossible at this time to fix the full nature, extent and severity and
3 duration of said injuries, but they are alleged to be permanent, progressive and disabling in
4 nature; that the Plaintiff Laura Brown has incurred and will likely continue to incur
5 medical expenses and other expenses to be proved at the time of trial, all to their general
6 damage in an amount now unknown.
7

8 **VI. PHYSICIAN/PATIENT PRIVILEGE**

9 6.1. Plaintiff realleges and incorporates by reference all preceding allegations.

10 6.2. The Plaintiff asserts the physician/patient privilege for 88 days following
11 the filing of this complaint. On the 89th day following the filing of this complaint, the
12 Plaintiff hereby waives the physician/patient privilege. That waiver is conditioned and
13 limited as follows: (1) The Plaintiff does not waive the Plaintiff's constitutional right of
14 privacy; (2) The Plaintiff does not authorize contact with the Plaintiffs' health care
15 providers of any kind except by judicial proceeding authorized by the Rules of Civil
16 Procedure; (3) Representatives of the Defendants are specifically instructed not to attempt
17 ex parte contacts with health care providers of the Plaintiff; and (4) Representatives of the
18 Defendant are specifically instructed not to write letters to Plaintiff's health care providers
19 telling them that they may mail copies of records to the defendants.
20
21

22 **VII. PRAYER FOR RELIEF**

23 **WHEREFORE**, Plaintiff Laura Brown prays for judgment and relief against the
24 Defendant Hershey as follows:
25
26

1. That the Defendant be held liable to Plaintiff for all damages suffered by Plaintiff in amounts to be proven at the time of trial;
2. For judgment for special damages including all hospital, medical, medication, and physical therapy expenses in an amount to be proven at trial;
3. For judgment for special damages including loss of past and future income in an amount to be proven at trial;
4. For loss of earnings or earning capacity, as may be proven;
5. For general damages for pain, suffering and mental anguish in an amount to be proven at the time of trial;
6. For costs, disbursements and attorney's fees incurred herein; and
7. For such other and further relief as the court deems just and equitable.

DATED in Spokane Valley, Washington, this 22nd day of December 2011.

LLOYD A. HERMAN & ASSOCIATES

By: 


Lloyd A. Herman
WSBA No. 3245
Attorney for Plaintiff

COPY
ORIGINAL FILED
DEC 22 2011
THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

Served by
ABC Legal

JAN 13 2012

Time: 11:55 A

(Copy Receipt)	Clerk's Date Stamp
 <p>SUPERIOR COURT OF WASHINGTON COUNTY OF SPOKANE</p> <p>BROWN, LAURA</p> <p>Plaintiff(s)/Petitioner(s),</p> <p>vs.</p> <p>THE HERSHEY COMPANY</p> <p>Defendant(s)/Respondent(s).</p>	<p>JUDGE LINDA G. TOMPKINS 94</p> <p>CASE NO. 2011-02-05185-9</p> <p>CASE ASSIGNMENT NOTICE AND ORDER</p> <p>CASE STATUS CONFERENCE DATE MARCH 23, 2012 AT 9:00 AM</p>

ORDER

YOU ARE HEREBY NOTIFIED that this case is preassigned for all further proceedings to the judge noted above. You are required to attend a Case Status Conference before your assigned judge on the date also noted above. The Joint Case Status Report must be completed and brought to the Status Conference. A Case Schedule Order, with the trial date, will be issued at the Status Conference.

Under the individual calendar system, the court will operate on a four-day trial week. Trials will commence on Monday, Tuesday, Wednesday or Thursday. Motion Calendars are held on Friday. All motions, other than ex parte motions, must be scheduled with the assigned judge. Counsel must contact the assigned court to schedule motions and working copies of all motion pleadings must be provided to the assigned court at the time of filing with the Clerk of Court. Pursuant to LCR 40 (b) (10), motions must be confirmed no later than 12:00 noon two days before the hearing by notifying the judicial assistant for the assigned judge.

Please contact the assigned court to schedule matters regarding this case. You may contact the assigned court by phone, court department e-mail or through the Spokane County Superior Court web page at <http://www.spokanecounty.org/superiorcourt>

DATED: 12/22/2011



MARYANN C. MORENO
PRESIDING JUDGE

NOTICE: The plaintiff shall serve a copy of the Case Assignment Notice on the defendant(s).